THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11699 of 2004

Dated:26.07.2007

Between:

M/s.Grand Estates,
and another.

…Petitioners

and

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
Revenue Department, Secretariat Buildings, Hyderabad,
and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The first petitioner is the Firm. The second petitioner is its partner. The firm purchased an extent of 600 square yards of plot in Survey No.74 situated at East Marredpally, Secunderabad, from Praveen Kumar and nine others under registered sale deed dated 05.08.1997. It is not necessary here to trace the title of the vendors of the petitioners or their vendors. Suffice to notice that the respondents filed L.G.C.No.167 of 1997 on the file of the Special Court constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, claiming the entire land in Survey No.74 as Government land including Survey No.74/11 where the petitioners' land is allegedly situated. Be that as it is, the petitioners wanted to make constructions, and when their request was not considered they filed W.P.No.21765 of 1998. This Court directed the respondents to consider their application. However, permission was not granted in view of pendency of L.G.C.No.167 of 1997. It is also alleged that the Government appointed a Committee headed by Sri Natarajan to look into the grievance of the occupants of the land admeasuring Acs.400.00 in Survey No.74, and after considering the report, the Government issued orders to regularize the

occupations. The Government also issued various Government Orders, being G.O.Ms.No.508, dated 20.10.1995, G.O.Ms.No.972, dated 04.12.1998, and G.O.Ms.No.515, dated 19.04.2003, permitting such regularization. The petitioners also submitted an application seeking regularization under G.O.Ms.No.515. It is alleged that the Tahasildar looked into the application and made recommendation for regularization. Even while the same was pending, the Tahasildar again issued the impugned notice under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act'), calling upon the petitioners to show cause as to why they should not be evicted from Government land admeasuring 600 square yards in Survey No.74. Therefore, the present Writ Petition is filed seeking a direction to the respondents to consider the application of the petitioners, and regularize as per G.O.Ms.No.515 and to declare the notice under Section 7 of the Act as illegal and arbitrary.

This Court ordered *status quo* while admitting the Writ Petition. An application is moved by the respondents for vacating the interim order dated 13.07.2004. When W.V.M.P.No.2835 of 2005 is still pending, the matter is heard finally and is being disposed of.

Learned Counsel for the petitioners placed strong reliance on the Supreme Court judgment in **Government of Andhra Pradesh v. Thummala Krishna Rao**[1], and submits that the Government filed L.G.C.No.167 of 1997, before the Special Court seeking a declaration that it is a Government land, and therefore, there is a genuine dispute. In such a case, the third respondent has no jurisdiction to issue the impugned notice under Section 7 of the Act. He also submits that the Government granted regularization in favour of number of persons in accordance with various Government Orders including G.O.Ms.No.515, and therefore, non-consideration of the application of the petitioners is arbitrary and illegal.

In the counter affidavit filed by the third respondent it is stated that the application for regularization has been rejected by the Government on 16.07.2004. It is further stated that the land admeasuring Acs.306.15 guntas in Survey No.74 is Government poramboke land and there are no subdivision numbers and also no supplementary setwar was issued in Survey No.74. It is a gut number. It is also stated in the counter affidavit that several cooperative housing societies with a view to grab the Government land started illegal constructions after obtaining permission from the civic bodies. The Commissioner of Land Revenue conducted detailed enquiry into the questions of land grabbing in Survey No.74 of Marredpally, and Survey No.844/1 of Malkajgiri. Thereafter, L.G.C.No.167 of 1997 was filed. The petitioners without submitting explanation to the show cause notice,

filed the present Writ Petition, and therefore, the same is liable to be dismissed.

Learned Assistant Government Pleader submits that the petitioners themselves submitted an application on 27.07.2000, after the Government filed L.G.C.No.167 of 1997, and therefore, having claimed regularization under G.O.Ms.No.515, they cannot turn around and claim that the property is absolute property of the petitioners and their vendors since 1963. If the petitioners' title was absolute, there was no necessity to approach the Government seeking regularization under G.O.Ms.No.515. Learned Assistant Government Pleader pointed out that G.O.Ms.No.515 dated 19.04.2003, and other Government Orders prior thereto were issued for regularizing all Government lands in occupation of the persons for the purpose of housing. Agreeing to the learned Counsel, **Thummala Krishna Rao** (supra) has no application to the facts of the case. He has also invited the attention of this Court to the proceedings in C2/443/2000, dated 16.07.2004, issued by the second respondent rejecting the request of the petitioner for regularization of the Government land.

This Court finds force in the submission of the learned Assistant Government Pleader. When the petitioners themselves sought regularization under G.O.Ms.No.515, reasonable inference can be drawn that the petitioners have also thought that there is some dispute about the title. When once the regularization was rejected, there cannot be any argument that the land belongs to the petitioners. Insofar as notice under Section 7 of the Act is concerned, as rightly pointed out by the learned Assistant Government Pleader, a Writ Petition would not lie. The petitioners are given liberty to raise all objections before the third respondent by filing a suitable reply to the impugned show cause notice under Section 7 of the Act. As and when such application is filed, the Tahasilar shall pass necessary orders under Section 6 of the Act. There shall be *status quo* as on today.

The Writ Petition, with the above observations, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

26.07.2007
vs

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[1] AIR 1982 SC 1081